

be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 881, 882, 883, 884, and 885, except to the extent specifically stated in those parts. Portions of subparts E and F of this part 880 have been cross-referenced in 24 CFR parts 881 and 883.

[61 FR 13587, Mar. 27, 1996]

**§ 880.104 Applicability of part 880 in effect as of November 5, 1979.**

(a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the November 5, 1979, effective date of part 880. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes ef-

fective on or after the 60th day following the November 5, 1979 effective date of part 880. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

[61 FR 13587, Mar. 27, 1996]

**§ 880.105 Applicability to proposals and projects under 24 CFR part 811.**

Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.

**Subpart B—Definitions and Other Requirements**

**§ 880.201 Definitions.**

The terms *Fair Market Rent (FMR)*, *HUD*, *NOFA*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

**ACC.** (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the PHA (as contract administrator) and HUD. Under the ACC, HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees, and the PHA agrees to perform the duties of a contract administrator.

**Agency.** As defined in 24 CFR part 883.

**Agreement.** (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

**Annual income.** As defined in part 813 of this chapter.

*Assisted unit.* A dwelling unit eligible for assistance under a Contract.

*Contract.* (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

*Contract Administrator.* The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

*Contract Rent.* The total amount of rent specified in the Contract as payable by HUD and the tenant to the owner for an assisted unit. In the case of the rental of only a manufactured home space, “contract rent” is the total rent specified in the Contract as payable by HUD and the tenant to the owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home.

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

*Drug-related criminal activity.* The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

*Elderly Family.* As defined in parts 812 and 813 of this chapter.

*Family (eligible family).* As defined in part 812 of this chapter.

*Final proposal.* The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)

*Gross Rent.* As defined in part 813 of this chapter.

*Household type.* The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

*Housing Assistance Payment.* The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in § 880.202(j), the Housing Assistance Payment is the difference between the Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a “vacancy payment”, may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the Contract.

*Housing Assistance Plan.* A housing plan which is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR, part 570.

*Housing type.* The three housing types are new construction, rehabilitation, and existing housing.

*Independent Public Accountant.* A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title “public accountant,” only Certified Public Accountants may be used.

*Low-Income Family.* As defined in part 813 of this chapter.

*Owner.* Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease newly constructed dwelling units assisted under this part. The term owner

also includes the person or entity submitting a proposal under this part.

*Partially-assisted Project.* A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

*PHA-Owner/HUD Project.* A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

*Private-Owner/HUD Project.* A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

*Private-Owner/PHA Project.* A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

*Project Account.* A specifically identified and segregated account for each project which is established in accordance with § 880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

*Rent.* In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

*Replacement cost.* The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary.

*Secretary.* The Secretary of Housing and Urban Development (or designee).

*Small Project.* A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

*Tenant Rent.* The monthly amount defined in, and determined in accordance with part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with part 813 of this chapter.

*Utility allowance.* As defined in part 813 of this chapter, made or approved by HUD.

*Utility reimbursement.* As defined in part 813 of this chapter.

*Vacancy payment.* The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

*Very Low-income Family.* As defined in part 813 of this chapter.

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#### **§ 880.205 Limitation on distributions.**

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.